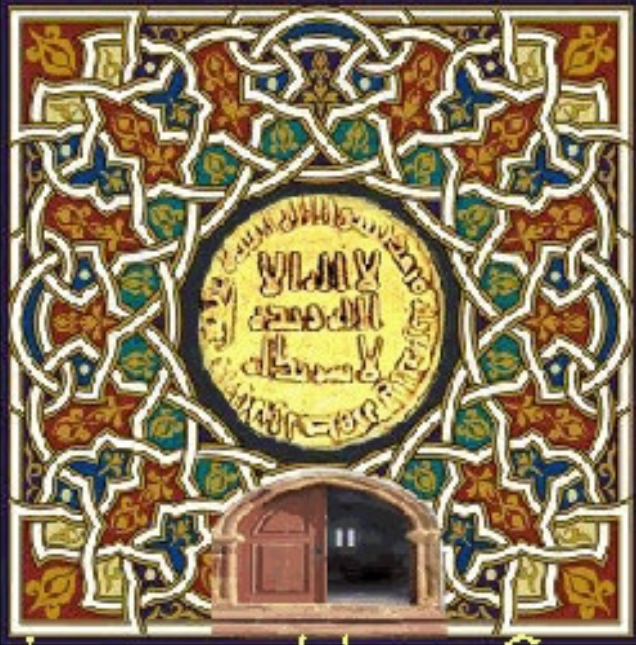


المدخل الى البيوع



Introduction to Islamic Commerce

By: Mufti Ebrahim Desai

Forward

All Praise is due to Allāh, the Master of the worlds, Peace and Salutations upon our beloved Prophet of Allāh ﷺ eternally.

Islām is a complete way of life with comprehensive teachings that provide guidance for every facet of our lives. From the various aspects of life, BUSINESS (buying & selling) is most crucial as every individual becomes involved in it, some time or the other in life.

Existence without the possibility of being able to buy and sell will be extremely difficult, clearly indicating in life the importance of trading. The book in your hands is a simple and reader-friendly treatise that outlines the basic Islāmic teachings pertaining to earning a livelihood. The utility of this production, dealt formally and systematically on the subject, has been enhanced manifold due to:

1. The simple examples provided for the various types of transactions;
2. The definitions of technical terms; and
3. The relevant questions at the end of a topic that help to consolidate whatever has been learnt.

May Allāh accept the services of the author, Hadrat Mufti Ebrahim Desai Sahib, for fulfilling an

important vacuum by disseminating this excellent and informative insight into the trading knowledge. Undoubtedly, his achievement will prove most appropriate for introduction as a textbook for high school students. It is also my humble appeal to all those in charge of educating our youth to introduce this invaluable book into the Madrasah Syllabi. Furthermore, for the irrefutable benefit to adults, I sincerely urge Imāms to read short passages from this book to their congregation, whenever convenient, after any specific Salāh.

Finally, I enumerate some features that are crucial and vital to enable individuals to earn wholesome and Halāl sustenance:

1. Patience;
2. Humility;
3. Tolerance;
4. Talking gently;
5. When purchasing any item avoid criticism of the merchandise merely to reduce its price
6. When selling, avoid overcharging;
7. Reveal any defects in the sale of objects;
8. Do not swear oaths for selling;
9. Avoid misrepresentations and falsehood;
10. To remain trustworthy;
11. Avoid all forms of breach of trust;
12. Never delay payments which are due.

May Allāh bless the best of both the worlds to the author and all those associated with him. Āmīn.

E.M.H. SALEJEE (Estcourt)

Prepared by Muhtaram Hadrat Mufti Ebrahim M. H. Salejee (Mudda Zilluhu), the Amir of the Shūra of Jamiat al-Ulama, KZN and Sirāt al-Haqq Islāmīc School.

Acknowledgements:

I would like to take this opportunity to express my utmost appreciation to Hadrat Moulāna Mahmūd Madanī Sāhib (Mudda Zilluhu) for his continued assistance and zeal in supporting academic programs for students. It is through his spiritual effulgence and drive that incites us to serve the keen masses by imparting the sacred knowledge of Deen. Furthermore, I would like to extend my sincerest gratitude to Moulāna Shaykh Irshād Amod (Mudda Zilluhu). It was through his fervent desire, earnest wish and continuous motivation that such a compilation was prepared for the budding young Muslim students of today in order to have a basic understanding of Business and Economics in Islam.

I make Du‘ā that Allah Ta‘ālā accepts this humble work as a means of dissemination of His pristine Sharī‘ah solely for His pleasure and Ridwān. Ameen.

Ebrahim Desai



The Four Fundamental Principles of Business & Economics:

Generally, an economic system comprises of the following four basic principles:

1. Determination of Priorities
2. Allocation of Resources
3. Distribution & Income
4. Development

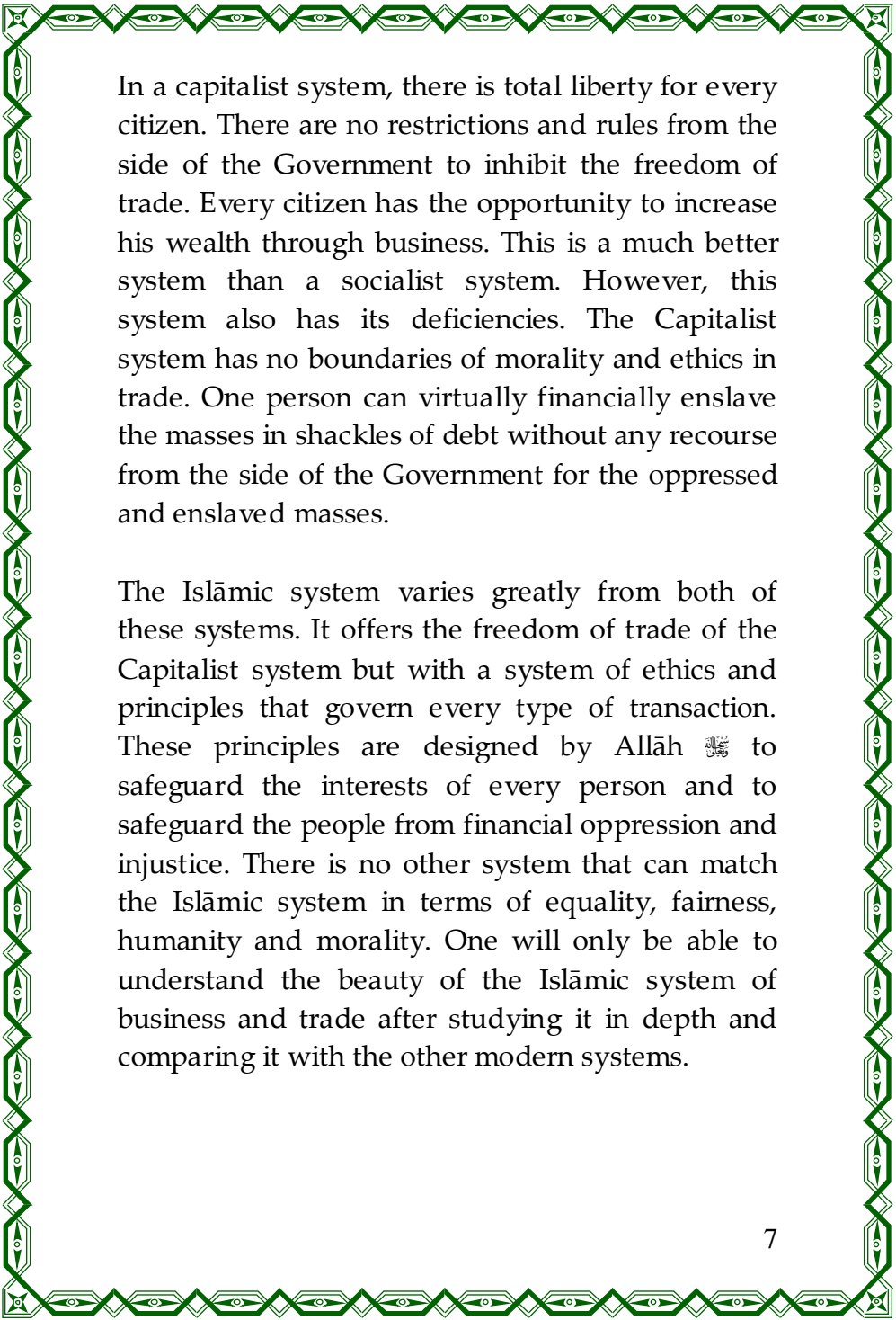
Socialism and Capitalism are only economic systems. They do not represent a complete way of life whereas Islām is not only about economics. It is a complete way of life. Allāh ﷻ says,

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا﴾

﴿This day I have perfected your religion for you and completed my favour upon you and I am pleased with Islām as your religion﴾ (5:3)

Islāmic Economics is just one facet of Islām, whereas Socialism and Capitalism are complete within themselves. In spite of the variance between the two systems, the economic system of Islām is complete, comprehensive and perfect as it is a system designed by the Perfect – Almighty Allāh ﷻ. Consider the following:

In a Socialist system, the above four are under the total control of the central Government and every citizen is an employee of the state. The Government decrees what the priorities of the day are and thus they divert the money and capital towards those priorities which they deem fit. If the Government sees that the needs of the country lie in certain areas such as scientific research, they will apply the above-mentioned four principles to acquire the desired goal that they had set in the scientific field. They will allocate a certain percentage of the country's resources to that industry. They will then distribute the work force to try to acquire the desired goal of that specific venture and similarly distribute the gains and income among the workers according to the rate they feel appropriate. Finally, they dictate the amount of funds needed for further development of that venture and re-invest the gains therein. In brief, the central Government is in total control of the entire economic process leaving no opportunity for the layman to individually prosper in business.



In a capitalist system, there is total liberty for every citizen. There are no restrictions and rules from the side of the Government to inhibit the freedom of trade. Every citizen has the opportunity to increase his wealth through business. This is a much better system than a socialist system. However, this system also has its deficiencies. The Capitalist system has no boundaries of morality and ethics in trade. One person can virtually financially enslave the masses in shackles of debt without any recourse from the side of the Government for the oppressed and enslaved masses.

The Islāmic system varies greatly from both of these systems. It offers the freedom of trade of the Capitalist system but with a system of ethics and principles that govern every type of transaction. These principles are designed by Allāh ﷻ to safeguard the interests of every person and to safeguard the people from financial oppression and injustice. There is no other system that can match the Islāmic system in terms of equality, fairness, humanity and morality. One will only be able to understand the beauty of the Islāmic system of business and trade after studying it in depth and comparing it with the other modern systems.

Ahadīth concerning Business in General:

Sayyiduna ‘Abdullāh ibn Mas’ūd ؓ narrates that Allāh's Messenger ﷺ said, 'No man who acquires unlawful property and gives some of it in alms will have it accepted from him; neither will he receive a blessing for it if he contributes some of it; and if he leaves some of it behind him, it will be his provision for Hell. Allāh ﷻ does not obliterate an evil deed by an evil one, but He obliterates an evil deed by a good one. What is impure does not obliterate what is impure.' (Al-Tirmidhī)

Sayyiduna Jābir ibn ‘Abdullāh ؓ narrates that Allāh's Messenger ﷺ said, "Flesh which has grown out of what is unlawful will not enter Paradise, but Hell is more fitting for all flesh which has grown out of what is unlawful." (Al-Tirmidhī)

Sayyiduna Al-Hasan ibn ‘Ali ؓ narrates that I have retained in my memory these words of Allāh's Messenger ﷺ, "Leave what causes you doubt and turn to what does not cause you doubt. Truth is tranquillity, whereas lies are perturbing." (Al-Tirmidhī)

Sayyiduna Rafi' ibn Khadīj ؓ narrates that Allāh's Messenger ﷺ was asked what type of earning was best and replied, "A man's work with his hand and

every business transaction which is approved."
(Ahmad)

Sayyiduna Rifa'ah ibn Rafi' ؓ narrates that The Prophet ﷺ said, "The merchants will be raised on the Day of Resurrection as evildoers, except those who fear Allāh ﷻ, are honest and speak the truth."
(Al-Darimī / Ibn Majāh)

Sayyiduna 'Abdullāh ibn 'Abbās ؓ narrates that Allāh's Messenger ﷺ said, "A dirham which a man knowingly receives in usury is more serious than thirty-six acts of fornication. Hell is more fitting for him whose flesh is nourished by what is unlawful."
(Ahmad / Al-Daraqutnī)

Sayyiduna Abu Hurayrah ؓ narrates that Allāh's Messenger ﷺ said, "On the night when I was taken up to Heaven I came upon people whose bellies were like houses and contained snakes which could be seen from outside their bellies. I asked Jibrīl who they were and he told me that they were people who had practiced usury." (Ahmad / Ibn Mājah)

Sayyiduna 'Ali ibn Abu Tālib ؓ narrates that he heard Allāh's Messenger ﷺ curse those who took usury, those who paid it, those who recorded it, and those who refused to give Sadaqah. (Al-Nasā'ī)
Sayyiduna Wāthilah ibn al-Asqa' ؓ narrates that he

heard Allāh's Messenger ﷺ say, "If anyone sells a defective article without drawing attention to it, he will remain under Allāh's anger," or, "the angels will continue to curse him." (Ibn Mājah)

Ahadīth regarding conducting proper Business:

Allāh's Messenger ﷺ has stated, "An honest truthful businessman will be among the Prophets, sincere believers and martyrs. (Al-Tirmidhī)

Allāh's Messenger ﷺ said, "There was a merchant who used to grant loans to people, and whenever his debtors were in straitened circumstances, he would say to his employees, 'Forgive them so that Allāh ﷻ may forgive us.' So, Allāh ﷻ forgave him." (Al-Bukhārī)

Allāh's Apostle ﷺ said, "The seller and the buyer have the right to keep or return goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost." (Al-Bukhārī)

Aḥādīth regarding Truthfulness:

Allāh's Apostle ﷺ narrated to us two narrations, one of which I have seen (happening) and I am awaiting the other. He narrated that honesty was preserved in the recesses of the hearts of men and then they learnt it from the Qur'ān, and then from the Prophet's ﷺ Sunnah. He also told us about its disappearance, saying, "A man will go to sleep whereupon honesty will be taken away from his heart, and only its trace will remain, resembling the traces of fire. He then will sleep whereupon the remainder of the honesty will also be taken away (from his heart) and its trace will resemble a blister that is raised over the surface of skin when an ember touches one's foot; and in fact, this blister does not contain anything. So there will come a day when people will deal in business with each other but there will hardly be any trustworthy persons among them. Then it will be said that in such-and-such a tribe there is so and so person who is honest, and a man will be admired for his intelligence, good manners and strength, though indeed he will not have Imān equal to a mustard seed in his heart." The narrator added: There came upon me a time when I did not mind dealing with anyone of you, for if he was a Muslim, his religion would prevent him from cheating; and if he was a Christian, his Muslim ruler would prevent him

from cheating; but today I cannot deal except with so-and-so and so-and-so. (Al-Bukhārī)

The Prophet ﷺ said, "Truthfulness leads to righteousness, and righteousness leads to Paradise. A man keeps on telling the truth until he becomes a truthful person.

Falsehood leads to wickedness, and wickedness leads to the Fire, and a man may keep on telling lies until such time that he is recorded to be a liar in the sight of Allāh ﷻ." (Al-Bukhārī)

Imām Mālik رحمه الله related to me that he heard that someone said to Luqmān "the Wise" عليه السلام, "What has brought you to this lofty status that we see?" Luqmān عليه السلام said, "Truthful speech, fulfilling the trust, and leaving what does not concern me." (Muatta Imām Mālik)

Stories:

1. Allāh's Messenger ﷺ states that a man once purchased from another a piece of land. The man who purchased the land then found a container filled with gold. He told the seller, "Take your gold from me. I only purchased the land from you not the gold." The seller then replied, "I sold you the land and all that is contained therein." The two then brought the

case before a third person to decide the affair between them. The arbitrator asked them if they had any children. One of them stated that he has a son. The other stated that he has a daughter. The arbitrator then told them to get their children married to one another and to spend the wealth upon them. (Ibn Mājah)

2. A man was in desperate need for a loan. He approached one of his acquaintances to request him for a loan of 10,000 dirhams. His acquaintance didn't mind giving him the loan but he wanted a witness or a guarantor for this transaction since it was such a large amount of money. He asked the person for a witness and he could not find anyone to stand as a witness for him. He told him that Allāh ﷻ is sufficient as a witness. He then asked him for some sort of guarantee. Unfortunately, he had no means of providing collateral either. Thus, he stated that Allāh ﷻ suffices as a guarantor. His acquaintance accepted this statement and gave him the loan of 10,000 dirhams. After securing the loan, the person travelled to another location on the other side of a river. The due date for the loan had approached and this person wanted to repay his creditor but he could not find any way of delivering the money. There were no boats readily available to carry

him over to the other side of the river. He wanted to keep his promise and tried desperately to fulfil it. He decided to cut out a piece of wood and carve out the inside. He placed the money along with a letter to his creditor in the carved out wood and sealed it tightly. He then released it into the river placing his trust in Allāh ﷻ. When the appointed time approached, the creditor waited by the shore-side to meet his debtor. Amazingly, the box reached its destination and the creditor opened the box with the letter from his debtor. This is the result of both parties placing their trust on Allāh ﷻ and trying their best to act according to His laws. (Al-Bukhārī)



البيع Bay'

Definition: An exchange of goods for either cash or other goods.

Terms: Bay', Bā'i (seller), Mushtari (purchaser), Mabī' (purchased/sold item), Thaman (purchase price)

Example: Muhammad purchases a vehicle from Ebrahim for R50,000. The Bā'i is Ebrahim. The Mushtari is Muhammad. The Mabī' is the vehicle and the Thaman is the R50,000.

How is a Bay' concluded?

1. If the Bā'i makes a proposal to sell an item for a particular price and the Mushtari accepts the proposal, the deal will be concluded.
2. Alternatively, if the Mushtari makes a proposal to purchase an item for a particular price and the Bā'i accepts the proposal, the deal will be concluded.

The Conditions for the validity of Bay':

1. The Bā'i must be the owner of the Mabī'.

Example: One cannot sell an item, a vehicle for

instance, belonging to someone else without the owner's permission.

2. The commodity must be recognized as a commodity in Sharī'ah.

Example: One cannot sell an item such as pork since it is not recognized as a commodity in the Sharī'ah.

3. The Mabī' must be specified. If the Mabī' is not specific, the Bay' will not be valid.

Example: If a shopkeeper states, "I will sell you any one item in this shop" without specifying the item, the Bay' will not be valid.

4. The Thaman must be specified.

Example: If a person is selling his vehicle, the price of the vehicle must be specified, for example at R50,000. If the Thaman is not specified, the Bay' will not be valid. For instance the Bā'i says that the vehicle is between R30,000 and R50,000.

5. The Bā'i must be able to hand over the sold item after the Bay'.

Example: A fisherman cannot sell a fish he has not caught as yet as he is not in a position to hand over the fish. If one concludes a deal to sell a 5kg Salmon to the Mushtari and he has not caught the fish, the

deal will be invalid.

6. The Bay' must not be suspended on a future event.

If the Bay' is suspended on a future uncertain event, for example, if the Bā'i tells the Mushtari, "I will sell you this car on Eid day," the Bay' will be invalid.

7. The Bay' must not be conditional.

For example, the Bā'i tells the Mushtari, "I will only sell you this car if you agree to allow me to drive it occasionally." In this instance also, the Bay' will be invalid.



Exercise:

1. Define the term Bay'.
2. Who is a Bā'i?
3. Who is a Mushtari?
4. What is the difference between Mabī' and Thaman?
5. What are the conditions for the validity of a Bay'?
6. Give your own example of a purchase and sale and identify each of the following in your example: Bā'i, Mushtari, Mabī', Thaman.

المرا بحة Murabahah

Definition: A sale on profit with reference made to the cost-price

Example: Zayd purchased a house for R100,000. He then sells the house to 'Umar for R150,000 after informing 'Umar of his cost-price. The R50,000 above the cost-price is Zayd's profit.

The Practical Use of Murābahah:

Zaid wishes to purchase a house for R100,000. However, he does not have the finances to purchase the house. He approaches 'Umar who has the finances. 'Umar purchases the house for himself for R100,000 and resells it to Zayd for R150,000 on deferred payments, for example, R2,000 per month. Zayd will then fully pay off the R150,000 over a period of 75 months. Generally, Islāmic Banks offer finances through Murābahah and deferred payments.





التولية Tawliyah

Definition: A sale on the cost-price

Example: Zayd purchases his house for R100,000 and resells it to 'Umar for the same price of R100,000. Zayd does not make any profit from 'Umar.

المساومة Musāwamah

Definition: A sale on profit without any reference to the cost-price

Example: Qāsim purchases a vehicle for R50,000. He then sells the vehicle to Salīm for R70,000 without informing him of the cost-price of the vehicle.



Exercise:

1. Define the terms Murābahah and Tawliyah.
2. What does Musāwamah refer to?
3. Provide your own examples for Murābahah, Tawliyah and Musāwamah transactions.
4. If Zayd purchased 10 used automobiles for R50,000 each and thereafter resold each one for R75,000 without informing the purchasers of his cost-price; what type of transaction will this be?
5. What is the difference between Musāwamah and Murābahah?
6. Give an example of the practical usage of Murābahah.

خيار الشرط

Khiyār al-Shart

Definition: Khiyār means “choice” and Shart means “condition.” Thus, Khiyār al-Shart means on condition of having a choice. In simplified terms, it means that a Mushtari purchases with an option of repudiating (withdrawing), or a Bā’i sells with a similar option. Such an option will automatically expire after 3 days.

Examples:

- a. Ebrahim wishes to sell a book to Ismail. Ebrahim is the Bā’i and Ismail is the Mushtari. Ismail purchases the book with an option to decide on the matter. Hence, Ismail exercised Khiyār al-Shart.
- b. Yūsuf wishes to purchase a car from Sulaymān. Sulaymān is inclined to sell his car but wishes to ponder upon selling his car. He can then exercise Khiyār al-Shart, which will allow him time to ponder over the sale without losing the deal.

The Ruling:

The person who reserved the right to sell or purchase may approve or rescind from the transaction unilaterally. However, the approval will take immediate effect, whereas a rescission will only take effect once it has been communicated to the other party. For example, if Sulaymān decided to go forward with the deal and sell his car, he does not have to inform Yūsuf . However, if he decided not to sell the car, he has to inform Yūsuf. If he does not inform Yūsuf, the deal between them will be concluded and binding. Sulaymān will then be forced to sell his car. If a rescission is not confirmed within 3 days, the contract is binding.

Exercise:

1. Define the term Khiyār al-Shart.
2. Which one of the transacting parties can implement Khiyār al-Shart?
3. If the Mushtari exercised Khiyār al-Shart after purchasing a computer, does he have to inform the Bā'i if he wishes to keep the computer?
4. Will he have to inform the Bā'i if he wishes to return the computer and cancel the sale?
5. What will happen if he does not inform the Bā'i of his wish to return the computer?



خيار الرؤية

Khiyār al-Ru'yah

Definition: Khiyār means “option” and Ru'yah means “to see.” Thus Khiyār al- Ru'yah means the option to cancel the transaction after seeing the purchased item.

Example: Yazid saw an advertisement of a refrigerator in Pick 'n Pay. He telephoned Pick 'n Pay and purchased it. When he saw the refrigerator after its delivery, he realized it was not what he had in mind. Therefore, Yazid will have the right to cancel the purchase based on Khiyār al-Ru'yah.

خيار العيب

Khiyār al-‘Ayb

Definition: Khiyār means “option” and ‘Ayb means “defect” or “deficiency.” Thus Khiyār al-‘Ayb means the right to cancel the transaction based upon discovering a defect in the item.

Example:

Imrān purchased a CD player wrapped in a box for R300. When he opened the box at home and tested the CD player, it did not play properly. It would play the CD partially and then start skipping tracks. This was the defect in the CD player. Imrān has the right to return the CD player, cancel the transaction and receive a refund of R300.



Exercise:

1. Define the term Khiyār al-‘Ayb.
2. Define the term Khiyār al-Ru’yah.
3. Provide an example of both Khiyār al-‘Ayb and Khiyār al-Ru’yah.
4. Would Imrān have the right to return the CD player if it was functioning properly?



خيار الغبن

Khiyār al-Ghabn

Definition: Khiyār means “option” and Ghabn means “deception.” Thus, Khiyār al-Ghabn will refer to the option to cancel the transaction after being a victim of deception. This option applies equally for the Bā’i as well as the Mushtari.

Example:

Zayd sold a pair of fake Adidas to ‘Amr for R200 whilst claiming they were genuine. ‘Amr later on discover that the Adidas were not genuine and that the Adidas logo was just placed there. In this situation, ‘Amr will have the right to cancel the transaction and collect a refund of his R200.





الاقالة Iqālah

Definition: To mutually dissolve a transaction

Example:

Muhammad purchased a property from Ahmad for R1million. The deal was concluded and Muhammad had to pay Ahmad. Unfortunately, Muhammad experienced a robbery and was badly affected. He could no longer afford to pay for the property he purchased from Ahmad. He requests Ahmad to dissolve the deal. Ahmad is at liberty to refuse Muhammad and compel him to honour the deal. However, if he accedes to Muhammad's request, he will be great rewarded by Allāh Ta'ala.



Exercise:

1. Define the term Khīyār al-Ghabn.
2. Define the term Iqālah.
3. Who has the right to cancel the transaction in Khīyār al-Ghabn?
4. Is it binding upon the Bā'i to cancel the transaction if the Mushtari wants an Iqālah?
5. What is the benefit of accepting Iqālah?



الربا Ribā

Warnings Concerning Ribā:

Those who live on Ribā (usury / interest) will not rise up before Allāh ﷻ except like those who are driven to madness by the touch of Shaytān. That is because they claim: "Trading is no different than Ribā," but Allāh ﷻ has made trading lawful and Ribā unlawful. He who has received the admonition from his Rabb and has mended his way may keep his previous gains; Allāh ﷻ will be his judge. Those who turn back (repeat this crime), they shall be the inmates of hellfire wherein they will live forever. (Al-Baqarah: 275)

Sayyiduna Abu Hurayrah ؓ narrates that the Allāh's Messenger ﷺ said, "Avoid the seven great destructive sins." The people enquired, "O Allāh's Messenger, what are they?" He said, "To join others in worship along with Allāh ﷻ, to practice sorcery, to take a life which Allāh ﷻ has forbidden except for a just cause (according to Islāmic law), to earn Ribā, to eat up an orphan's wealth, to flee from the battlefield at the time of fighting, and to falsely accuse chaste believing women who are oblivious and innocent of any evil. (Al-Bukhārī)

Sayyiduna Abu Juhayfah ؓ narrates that Allāh's Messenger ﷺ cursed a woman who practices tattooing, the one who gets herself tattooed, the one who earns Ribā and the one who gives Ribā. (Al-Bukhārī)

It is narrated by Sayyiduna Abu Sa'īd al Khudri ؓ that once Bilāl ؓ brought expensive dates known as Barni dates to Allāh's Messenger ﷺ and Allāh's Messenger ﷺ asked him, "From where have you brought these?" Bilāl ؓ replied, "I had some inferior type of dates and exchanged two Sā's (1 Sā' = 3.12 kg) of it for one Sā' of Barni dates in order to give it to Allāh's Messenger ﷺ to eat." Thereupon Allāh's Messenger ﷺ said, "Beware! Beware! This is definitely Ribā! This is definitely Ribā! Don't do so, but if you want to buy superior dates sell the inferior dates for money and then buy the superior dates with that money." (Al-Bukhārī)



Oppression of Ribā and the Morality of Islām:

At its core, Ribā is a type of financial oppression. It is a system where the rich increase their wealth at the expense and suffering of the poor. The rich stay permanently rich and the poor become increasingly poor and enslaved to their creditors. A poor person who wants to enrich himself approaches a wealthy person to request a loan. The wealthy person should accede to the request of his poor brother and grant him the loan as a token of humanity and brotherly support. However, instead he wishes to benefit from the poor person's misfortune and charges him a certain percent of interest, 15 % for example. Whether this poor person enters into a profitable business venture or not, the creditor wants a guaranteed return of 15 %. Every month this poor person delays in repayment, the interest amount compounds and increases many fold. It is not long before the interest amount surpasses even the principle amount. The poor person who has no

other means of finance or support is sinking further and further into a downward spiral of debt. In the meantime, his so-called “brother” is becoming richer and richer from the inability of this poor person to pay his debt. This is clear tyranny.

Consider the following comparative illustration.

Ten people deposit their money of R100,000 each with a 10% interest rate. The Bank collectively has a million rands. A rich merchant requests the Bank for a million Rand loan payable at 15%. The rich merchant has the million rands at his disposal and uses his business skill and influence and earns 100% profit on the million rands. He has to pay the Bank the million rands and R150,000 in interest. He earns for himself R850,000. The Bank will give its depositors R10,000 each and keep for itself R50,000. This is total injustice as the rich person uses the wealth of the poor and makes R850,000, whereas the poor only get R10,000 each.

Consider the Islāmic system of the above example. The ten people would enter into a partnership of 1 million rands with the rich merchant at an agreed ratio of 50% profit sharing. The million Rand profit will be divided between the two parties at R500,000. Each partner will earn R50,000 profit as opposed to the meagre R10,000 interest.

In Islām, this type of oppression has been prohibited. Allāh ﷻ intends and commands that people deal with one another in a moral and ethical manner. For this reason, Allāh ﷻ has placed certain conditions and laws for every sphere of life. Islām is unique from all other religions in that we are guided even in our monetary dealings. If a person offers a loan to his brother, he is prohibited from taking any excess amount for his good deed. Allāh ﷻ Himself will repay his act of kindness in the hereafter. If the creditor wants to profit from his money as well, then he can enter into a joint venture with his poorer brother. By doing so, both partners will share in the profit of the business together and if there happens to be any loss, both brothers will share in the loss together. This promotes brotherhood and humanity among mankind as opposed to the system of Ribā which supports enslavement and oppression of the poor.

When Allāh's Messenger ﷺ declared interest as Haram, he also declared that the first interest to be wiped put is the interest of his uncle, 'Abbās bin Abdul Muttalib ؓ. Hadrat 'Abbās ؓ was a very wealthy person. At that time, the interest due to him was 10,000 Dinars. A Dinar is a gold coin of 4.4 grams. 1,000 gold coins will be approximately 44 kg of gold. 1 kg of gold is presently approximately R1 million thus 44 kg will be R44million. Hadrat

‘Abbās ﷺ could have purchased a huge chunk of the Arabian Peninsula but he forfeited that amount as it was interest and Haram.

Understanding Ribā:

Definition: Ribā literally means to increase. In Shar’i terminology, it refers to an undeserved excess upon wealth and in English, it is known as interest or usury.

Example: Yūsuf borrowed R10,000 from Qāsim at a rate of 10%. Yūsuf then pays Qāsim R11,000 upon the completion of 1 year. That is R1,000 in excess against the R10,000 loan.

Types of Interest:

1. Ribā al-Nasī’ah

Nasī’ah means credit and in Shar’i terminology, it refers to taking a loan whereby one agrees to pay back the loan at a later date with an excess. The above example is Ribā al-Nasī’ah. The excess amount is paid in lieu of time.

2. Ribā al-Fadl

Fadl means surplus. In Shar’i terminology, it refers to a surplus in one of two items of the same type or species that are sold by either weight or measure.

Example: Zākir has 1kg of good quality dates and

he wants to exchange it with Zubayr for 2 kg of lower quality dates. Since both sides of the transaction consists of dates which are sold by weight, the surplus 1kg of lower quality dates will be considered as interest. If the items on either side of the transaction are of different species or they are not sold by weight or volume, the surplus will not be considered as interest.

Example: Mariam gives a Bic pen to Fatimah in exchange of two pencils. The extra pencil will not be considered as interest since both items are not the same. Furthermore, both items are not sold by weight and/or volume. Pens and pencils are sold in units. If both items are the same but not sold by weight and/or volume, the surplus on one side will be permissible on condition that the transaction be a cash deal.

Example: Imrān sold one Bic pen in exchange of two Bic pens. Both sides of the transaction consist of the same commodity but they are not sold by weight and/or volume. Thus, the extra Bic pen is not considered as interest. However, the condition is that the sale be a cash deal and not a credit deal. If both items are different but are sold by weight and/or volume, then the surplus will be permissible on condition that it is a cash deal.

Example: Ismail sold 1kg of barley in exchange of 2kg of wheat. Barley and wheat are two different species. However, both are sold by weight. Hence, the surplus will be permissible on condition that the transaction be a cash deal.



Exercise:

1. What are the literal and Shar'ī meanings of Ribā?
2. Provide an example of a Ribā-based transaction.
3. List the various types of Ribā with a detailed explanation of each type.
4. If Zayd sold 20 kg of dates in exchange of 25 kg of lower quality dates, will this be regarded as Ribā? If so, what type of Ribā will it be?
5. Provide your own example of Ribā al-Nasī'ah.
6. How is Ribā a type of oppression?



الصف Sarf

Definition: Sarf literally means “to change”. In Shar’i terminology, it means the exchange of one form of money with another. Previously, gold and silver were regarded as money.

Conditions of Bay’ al-Sarf:

1. If both of the exchanges are of the same type or species, then:
 - a. There must be equality in the amount.
 - b. Both contracting parties must take immediate possession of the exchanged items.

Example: Ahmad sells 1 oz of gold in exchange of 1 oz of gold to Muhammad. Both Ahmad and Muhammad have to take immediate possession of each other’s gold. Furthermore, Ahmad and Muhammad cannot add anything over and above the 1 oz of gold from either side as that will not be in lieu of anything and thus be considered as Ribā.

2. If the exchanged items on both sides are of different species as in the case of gold being

exchanged for silver, both parties must still take immediate possession of the exchanged items. However, equality in the amount of the exchanged items is not necessary.

Example: Zakariyya sold 1 oz of gold to Yahya in exchange of 5 oz of silver. This is permissible on condition that Zakariyya takes possession of the silver and Yahya takes possession of the gold. Zakariyya or Yahya may not say, "I will give my gold or silver tomorrow."

Currency Trading:

Trading in currencies falls under Bay' al-Sarf. If rands are exchanged for rands, then both amounts must be equal and both parties must take cash possession of the rands.

Example: Yahya exchanges a R10 note for R10 change (loose money) with Muhammad. This is permissible on condition both take immediate possession of the exchanged items.

If rands are exchanged for dollars, then both are of different currencies. It is permissible to trade in unequal amounts such as having more of one currency on one side and less on the other side. However, this will only be permissible on condition it is a cash deal.

Example: Nāsif sells \$100 to Yahya for R700. This is permissible. However, Nāsif must take possession of the R700 from Yahya immediately and Yahya must take the \$100 from Nāsif immediately.

Note: There is a difference between gold and silver and present-day currencies. The contemporary Muftis have permitted the exchange of two currencies whereby one side of the deal is credit and the other is cash. For example, if Nāsif gives Yahya the \$100 now, Yahya can give Nāsif the R700 later. However, this has to be on the spot rate.



Exercise:

1. Define Sarf.
2. What are the conditions of Bay' al-Sarf?
3. Can one of the contracting parties promise to pay the other party at a later date?
4. If the items of exchange are of different species, must there be equality in measure?
5. What is the view of the contemporary Muftis in regards to exchanging two different currencies?

الرهن Rahn



Definition: Rahn means to withhold.

In Shar'i terminology, it means to place an item as collateral against a loan or a debt.

Terms: Rahn, Rāhin, Murtahin, Marhūn

Rāhin: Debtor giving the collateral

Murtahin: Creditor receiving the collateral

Marhūn: Item given as collateral

Example: Zayd took a loan of R50,000 from Yahya to be paid at the end of three months. Yahya requests Zayd to offer him a security against the R50,000. Zayd gives his car to Yahya as collateral against the loan, and authorises Yahya to sell the car in order to settle the debt. The placing of the car against the loan is Rahn. Zayd is the Rāhin, Yahya is the Murtahin and the car is the Marhūn.



If Zayd does not repay the loan of R50,000 by the due date in three months time, Yahya will have the right to sell the car and recover his money. If Yahya received less than R50,000 from the sale of the car, Zayd will still owe the balance to Yahya. If Yahya receives more than R50,000 for the car, the surplus must be given to Zayd.

Exercise:

1. Define Rahn.
2. Define the terms Rāhin, Murtahin and Marhūn.
3. Make up your own example of Rahn being used in a modern-day transaction.
4. If the Murtahin sold the Rahn due to the delay in repayment, can he keep the surplus amount?
5. What happens if the Murtahin could only sell the Rahn for a price less than the amount he is owed?

السلم Salam



Definition: To purchase an item with a cash (immediate) payment in return for deferred delivery of the purchased item.

Terms: Salam, Rabb al-Māl (purchaser), Muslam Ilayh (seller), Ra's-ul-Māl (capital), Muslam Fih (purchased item)

Example:

‘Umar wants to purchase 100 bags of potatoes. He pays Bakr R1,000 now in exchange of the potatoes to be delivered in two month’s time.

In the above example, ‘Umar is the Rabb al-Māl, Bakr is the Muslam Ilayh, the R1,000 is the Ra’s al-Māl and the 100 bags of potatoes make up the Muslam Fih.



The Practical Need for Salam:

Zayd is a farmer and he is very skilful in agriculture. However, he lacks the finances to start farming. He approaches some businessmen and presents a proposal of Salam before them. They are all prepared to place orders with him and pay him the cash for the ordered items. Zayd then uses the newly acquired finances to farm and deliver the ordered crops to his financiers. These financiers will also benefit from such a transaction since Zayd will charge them a lesser price for the crops as opposed to purchasing crops for cash.

Conditions for the Validity of Salam:

Salam can only be conducted in items that can be weighed, measured or in items of similar units that are sold by units. Therefore, Salam will be permissible in items such as wheat, barley, dates etc. Salam will not be permissible in animals. It is

also imperative that the ordered item be specified in every possible way. For example, the purchased item must be specified, the quality and classification of the item must be specified, the amount must be specified and the time of the delivery must be specified. An example of this will be that the Muslim Ilayh stipulates that he will deliver 100 kg of Grade-A Indonesian coffee beans in two months in exchange of R5,000.



Exercise:

1. Define the term Salam.
2. What are the four main components of Salam?
3. Is the Muslim Ilayh the person who sells the item or is he referred to as the Muslim Fih?
4. What is the name of the capital used to purchase item is a Salam transaction?
5. Provide your own example fulfilling all of the conditions for the validity of a Salam transaction.



الإجارة Ijārah

Definition: Ijārah means “to hire.” Ujah means “the fee.”

There are two types of hiring:

1. Usufruct – The right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way.
2. Services

Some examples of hiring usufruct are hiring a house, a property or a machine. The fees paid in lieu of hiring such usufruct is known as Ujah.

Some examples of hiring services are hiring employees, obtaining the services of a mechanic or visiting the doctor. The basic condition of Ijārah is that everything must be specified. For example, if a person hires a house, the period of hiring as well as the rental must be specified. Similarly, if one hires an employee, his wages as well as his term of employment must be specified.

If there is any ambiguity in the hiring, the contract will become void. Car hiring, renting of accommodations and time shares fall under Ijārah.

Exercise:

1. To what does the term Ujrah refer?
2. Define the term Ijārah.
3. Name the two types of hiring and list one example of your own of each type.
4. What happens if the employer fails to specify the wages of his employee?



الشركة Shirkah

Definition: Literally Shirkah means partnership. Practically it means two or more persons jointly owning an item, or contracting jointly for profit.

Examples:

1. Zayd has R50,000. 'Umar also has R50,000 and both decided to pool their money and purchase a vehicle. That is partnership in purchasing. The vehicle now belongs to both Zayd and 'Umar.
2. Zayd and 'Umar are brothers and their father, Yūsuf passed away. Yūsuf left behind a house. Zayd and 'Umar both inherit the house and are now partners in the house.



3. Zayd and 'Umar wish to enter into a joint investment scheme. They decided to open a supermarket. Both contribute R250,000 each. The business will belong to both Zayd and 'Umar.

Zayd and 'Umar can decide and agree on their capital of contribution as well as the profit sharing ratio. The capital contribution can be equal and it could also be unequal. The profit ratio could also be equal or unequal.

Example: Zayd and 'Umar contribute R250,000 each in a super-market. The profit ratio could be equal, for example 50% each, or unequal, for example 40% and 60%.

The other forms of Partnership:

1. Shirkat al-Sana'i: Shirkah means partnership and Sana'i means service.

This type of partnership is where two or more persons of the same skill form a partnership and provide services on condition that they share the income.

Example: Yaqūb and Yūsuf are medical practitioners. They open a surgery and agree to treat patients. All the fees are put into one pool and

then the earnings are divided accordingly to mutual agreement. The same could be practiced by painters, tailors, lawyers and barbers.

2. Shirkat al-Wujūh: Shirkah means partnership and Wujūh literally means face. In this context, it refers to credit worthiness. Practically it means two people do not have anything and they are people of respect and integrity. They approach people for loans or purchase goods on credit and then do business. People consider their respect and offer them loans or goods on credit.

Example: Sulaymān and Dāwūd are poor people but highly respected. They approach Aslam and request him to give them goods on credit. Aslam considers their respect and gives them goods on credit. Suleiman and Dawud do business and share the liability and profits equally.

Exercise:

1. Define the term Shirkah.
2. Provide an example of Shirkah.
3. List some other forms of Shirkah.
4. Is it necessary for both parties of a Shirkah to invest an equal amount?
5. Is it necessary for both parties of a Shirkah to receive an equal ratio of the profit?



المضاربة Mudārabah

Definition: Mudārabah literally means to travel.

In Shar'ī terminology, it refers to a type of partnership where one partner outlays his wealth and the other offers his skills on condition they share the profit according to mutual agreement.

Terms: Mudārabah, Mudārib, Rabb al-Māl

Rabb al-Māl: Partner who provides the capital

Mudarib: Partner who manages the business venture

Example:

Yūsuf enters into a partnership with Yaqūb. Yūsuf is to put R100,000 and Yaqūb is to do business with the R100,000 on condition they share the profit at, for example, 50%. Yūsuf is the Rabb al-Māl and Yaqūb is the Mudārib. Yūsuf could stipulate the type of business Yaqūb is supposed to do or leave it open to Yaqūb to do any type of business he feels appropriate.

Difference between Shirkah and Mudārabah:

In Shirkah, both partners contribute the capital investment and in Mudārabah, only one person contributes the capital investment.

Contemporary Implementation:

Generally, Islāmic Banks invest funds on the basis of Shirkah and Mudārabah.

The depositors and the Bank, both could invest their money in a Shirkah venture or the depositors offer their money for investment and the Bank invests the money without any contribution from their side. The latter is Mudārabah. The depositor is the Rabb al-Māl and the Bank is the Mudarib.

Exercise:

1. Define Mudārabah.
2. Which partner of a Mudārabah supplies the capital for investment?
3. Which partner does the work in a Mudārabah?
4. What is the difference between Shirkah and Mudārabah?
5. How can Mudārabah and Shirkah be implemented in present times?

الوكالة Wakalah

Definition: Wakālah means agency. Practically it means to depute someone to carry out a certain act on one's behalf.

Terms: Wakālah, Wakīl, Mu'akkil

For example, Zakariyya wishes to purchase a specific vehicle. He appoints Harūn to purchase the vehicle on his behalf. Zakariyya is the Mu'akkil (principal) and Harūn is the Wakīl (agent).

In Wakalah, Harūn will have to carry out the instructions of Zakariyya. However, all of the obligations that flow from the contract will be the duty of the Wakīl. In the above example, Harūn will be responsible for paying for the vehicle. He will take the vehicle back to the seller if anything is wrong with it.

الكفالة Kafalah

Definition: Kafālah means surety. Practically it refers to extending a personal guarantee for debts or loans.

Terms: Kafālah, Asīl, Kafīl, Makfūl Lahu

Example: Ebrahim requests Yūsuf for a loan of R100,000. Yūsuf requests Ebrahim to provide a guarantor to secure payment of his debt. Yaqūb stands guarantee for Ebrahim for the R100,000. Ebrahim is the Asīl (original debtor), Yūsuf is the Makfūl Lahu (creditor to whom the guarantee is offered) and Yaqūb is the Kafīl (guarantor). If Ebrahim does not pay Yūsuf, Yūsuf will have the right to claim from Yaqūb. Yaqūb will have to honour the debt.

Exercise:

1. Define the terms Wakālah, Wakīl, Mu'akkil and Kafālah.
2. Will it be permissible for the Wakīl to act according to his own desires in a Wakālah?
3. What role does the Kafīl play in a Kafālah?
4. If the Asīl fails to pay his debts, who will be responsible to pay it on his behalf?



الحوالة Hawālah

Definition: Transference of debt

Term: Hawālah, Muhīl, Muhtāl Lahu, Muhtāl Alayhi, Muhtal Anhu

Example: Ebrahim owes Yūsuf R100,000. Ebrahim requests Yaqūb to take over the debt and be indebted to Yūsuf for the R100,000. Ebrahim is the Muhīl (the transferor), Yaqūb is the Muhtāl Alayh (person who assumes the debt) and Yūsuf is the Muhtāl Lahu (creditor who is owed). Yaqūb and Yūsuf must both agree to the transfer of the debt. Upon transfer, Yaqūb will no longer have a claim against Ebrahim.

Contemporary Implementation:

When one makes out a cheque, it will be considered as Hawalah. The Bank agrees to pay the debtors out on behalf of its client.



الهبّة Hibah

Definition: Gifting

Terms: Hibah, Wāhib, Mawhūb Lahu, Mawhūb Bihi

Example: Yūsuf gave Ahmad a car as a gift. Yūsuf is the Wāhib (one gifting the item), Ahmad is the Mawhūb Lahu (one who is receiving a gift) and the car is the Mawhūb Bihi (gifted item).

Conditions for Validity:

1. There must be Qabda (taking possession) of the Mawhūb Bihi.

If the Mawhūb Lahu did not take physical possession of the Mawhūb Bihi, the gifting will not be valid.

2. The gifted item must be completely separate if it is of a divisible nature. For example, Yūsuf gave Ahmad his share of a jointly owned property without dividing it. Such a gift will not be correct. In such an instance, as an alternative, Yūsuf may sell his share to Ahmad for a nominal amount. Division is not necessary in a sale.



Exercise:

1. Define the term Hawālah.
2. Who is the Muhīl?
3. What is an example of modern implementation of Hawālah?
4. Define the terms Hibah, Wāhib and Mawhūb Lahu.
5. If the Hibah was not received and the Mawhūb Lahu did not take possession, will the Hibah take place?

التأمين Insurance

It has been reported from Sayyiduna Abu Hurayrah رضي الله عنه that Allāh's Messenger ﷺ prohibited sales consisting of gharar (uncertainty). (Al-Tirmidhī)

In Shar'i terminology, gharar refers to suspending ownership on a future uncertain event.

Example: Yūsuf says to Qāsim, I am undertaking a journey to Iceland. If I die in this journey, then I give you my house.

Application: Yūsuf has suspended the ownership of his house to Qāsim on his journey to Iceland and his death. It is possible that Yūsuf will not travel to Iceland. If he does travel, he may not die. Therefore, such ownership contingent on a future event is invalid in Islām.

In insurance, a client pays the company premiums to secure payment upon various uncertain future events such as accidents, sickness, etc. Such a transaction falls in the category of Gharar and is not permissible.